



City of Dublin
**Land Use and Long
Range Planning**

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BOARD OF ZONING APPEALS

MEETING MINUTES

OCTOBER 24, 2013

AGENDA

NEW CASE:

- 1. Pilkington Residence – Setback
13-097V
(Disapproved 5 – 0)**

**5152 Glenaire Drive
Non-Use (area) Variance**

Chair Brett Page called the meeting to order at 6:28 p.m. Other Board members present were Patrick Todoran, Rion Myers, Brian Gunnoe, and Jamie Zitesman. City representatives present were Tammy Noble-Flading, Laurie Wright, and Flora Rogers.

Motion and Vote

Brett Page moved, James Zitesman seconded, to accept the documents into the record. The vote was as follows: Mr. Gunnoe, yes; Mr. Myers, yes; Mr. Todoran, yes; Mr. Zitesman, yes; and Mr. Page, yes. (Approved 5 – 0.)

Motion and Vote

Rion Myers moved, Mr. Zitesman seconded to approve the July 25, 2013 meeting minutes as presented. The vote was as follows: Mr. Page, yes; Mr. Gunnoe, yes; Mr. Todoran, yes; Mr. Zitesman, yes; and Mr. Myers, yes. (Approved 5 – 0.)

Tammy Noble-Flading referred to the August 29, 2013 meeting minutes, on page 8, and requested that the motion be amended, To modify the decision rendered by Planning to allow a pavement width, ~~measured from the building line to the right of way line, that allows a maximum width of 23 feet at the building line and tapers to 16 feet at the right of way line as shown on Exhibit A.~~

Mr. Page clarified that Exhibit A was the drawing that Mr. Ruma had submitted, and that they were accepting that attachment.

Motion and Vote

James Zitesman moved, Brian Gunnoe seconded to approve the August 29, 2013 meeting minutes as amended. The vote was as follows: Mr. Myers, yes; Mr. Todoran, yes; Mr. Page, yes; Mr. Gunnoe, yes; and Mr. Zitesman, yes.

Administrative Business

Mr. Page swore in those who intended to address the Board in regards to any of the cases on this Agenda, including Fred Parrish, Inspired Spaces Landscape and Design, representing the applicants John and Kymn Pilkington.

**1. Pilkington Residence – Setback
13-097V**

**5152 Glenaire Drive
Non-Use (area) Variance**

Tammy Noble-Flading presented this application requesting a variance in regards to an accessory structure and patio which encroach into the front building line setback of Dublin Road. She said the site is approximately one-acre in size and located on the north side of Glenaire Drive, east of Dublin Road. She said the site is zoned R-2, Limited Suburban Residential District. She said the site contains a single-family residential structure located to the central portion of the site. Ms. Noble-Flading said it was important to note that the house is situated further behind the front setback line, of Glenaire Drive, reducing the area of the rear yard. She said mature vegetation exists predominately to the rear of the property. She said that the issue before the Board is a setback that is associated with Dublin Road, the north-south road that runs parallel to the property, and items that are located within that setback.

Ms. Noble-Flading said that the site has been developed with a single-story residential structure with access points located on Glenaire Drive. She said the issue before the Board is the construction of the 'gazebo', and a circular patio area surrounding it. She said that both construction projects encroach into the 50-foot setback from Dublin Road. She said that the setback is large for a residential roadway and furthermore, this portion of Dublin Road, is wider than other portions of the road. She indicated on a drawing where the encroachment was located.

Ms. Noble-Flading presented a photograph provided by the applicant of the structure which was basically four-columns with no exterior walls and a roof structure. She also indicated the patio that surrounds the structure. She presented photographs of the property looking from the driveway to the existing residential structure. Ms. Noble-Flading said that the detached structure is visible from Glenaire Drive, but not Dublin Road with the existing heavy vegetation.

Ms. Noble-Flading reviewed the criteria and stated Planning's analysis of the application. She stated that based on that analysis, Planning is recommending disapproval of this application.

James Zitesman asked if everything had already been constructed.

Ms. Noble-Flading confirmed that the structure had been constructed, but the Board needed to review this application as if construction had not taken place. She said it was inappropriate to give the applicant an advantage in this situation where the construction had already occurred. She said according to the applicant, they had contacted Dublin's Building Department and was told that the project did not require a building permit because it was under 200-square-feet. She said that this does not exempt a zoning review which is required for all new construction.

Mr. Zitesman asked if there were past instances where the Board granted a variance regarding this kind of front setback.

Ms. Noble-Flading said that this was a very unique variance request, and there has not been a request or approvals granted within the past several years.

Mr. Page asked if when the applicants were told they could build this structure, they were given guidance that it might be impacted by the Zoning Code.

Ms. Noble-Flading said that the Building Division is aware that zoning issues are different than building and should have responded appropriately. She suggested that the applicant discuss that further.

Fred Parrish, Inspired Spaces Landscape and Design, (347 Ridgewood Drive, Hilliard, Ohio) said that that the applicants came to him for a landscape design explaining that they had a very tough lot that was triangular in shape with a 30-foot elevation change from the top corner, down towards the house. He also mentioned topography changes to the site. He said that the 30-foot slope towards the rear of the

property created a poorly drained backyard. He said that a retaining wall is located on site to help elevate this condition. He said in order for there to be a usable backyard, they tried to put the construction directly behind the house so that they could walk directly out of the kitchen to use the entertainment area. He said they went off towards the east side of the house, which is an alternative location mentioned by Ms. Noble-Flading, it was not flat and would impact drainage to the site. He stated that he believed the location in which they constructed was the most viable location on the site.

Mr. Zitesman confirmed that Mr. Parrish knew where the setback line was located.

Mr. Parrish said that had they known where it was, they probably would have had more problems with the excavation into the hillside by keeping that away from the house aesthetically. He said it would have been by far, more costly to do that.

Mr. Zitesman said that his question was if it was possible.

Mr. Parrish said it was possible.

Mr. Zitesman said if they had moved it, or even just turned it a little so it would not be a little different orientation, he did not know if it would be aesthetically displeasing to the homeowners.

Rion Myers asked if a professional land surveyor had been asked to survey the property.

Mr. Parrish stated no.

Mr. Myers, a professional surveyor, said it would have saved the applicants a lot of time and money to have it surveyed properly so that the location of the lines would be known before the construction was done.

Brian Gunnoe reminded that the Board could not look at the structure because for the purpose of this or any of the facts being presented, it did not exist.

Mr. Parrish said that there were 24 homes in the neighborhood other than the Pilkington's, 17 of 24 homeowners in the neighborhood were aware of this variance request because the Pilkingtons personally let them know about it. He said that all 17 homeowners had signed the paper he submitted to the Board stating they were not concerned with the construction. He also stated that as soon as he received a letter from the City notifying them that the construction required a permit, they responded.

Brian Gunnoe asked about the letter he received from the City.

Ms. Noble-Flading explained that Dublin's Zoning Inspector had contacted the Pilkingtons due to a complaint received.

Mr. Page invited public questions or comments regarding this application. He swore in John Pilkington, the applicant.

Mr. Pilkington said that he said that they did not have any idea that they were encroaching into a setback. He said that this is something that is very unfortunate. He said that many of his neighbors supported this because it helped maintain the value of the neighborhood. He also said that he could not see how this construction would be impacted by widening the road. He said as far as the view and driving through the neighborhood, he was the first house and he had the most curb appeal. He said he wanted to make sure that the structure flowed with his house. He said that when they walked out of their kitchen, they wanted to walk out to the patio, but unfortunately, it faced that side of the road. Mr. Pilkington said that they could have chosen to move it to the other side of the property, but it would not have functioned properly.

Mr. Gunnoe said this was definitely a unique variance request that the Board had not seen. He said it was challenging for him to block out that the structure had already been built, and not pay attention to that. He recalled a previous Post Road variance application the Board had seen where a garage was built in the floodplain because of elevation changes on the site. He said that this had similar characteristics as this case but unfortunately the members agreed with Planning's analysis that the factors did not constitute as special conditions. He said he looked at the elevation changes to the property and agreed there was ample room to the east of the current location.

Mr. Zitesman said that he thought the Board was being asked to correct a mistake made by the contractor.

Mr. Gunnoe reiterated that Ms. Noble-Flading said that what the Board had to consider was that there was no structure(s) on site.

Mr. Page mentioned a case that the Board reviewed where they discussed the right for property owners to have patios/decks in the rear of their property. He said the case dealt with a property owner who would have had a small, five-foot patio if the Code were met. He said that the question becomes, is there usable land to allow the property owner to have amenities that most all property owners are entitled to. He stated that in this instance, he believed the property owners could meet the Code and still have the outdoor space.

Mr. Myers said if it had not been built, it would be much easier to disapprove the request. He said it was difficult because the property owners were trying to improve their property. Mr. Myers said that they were talking about setting a precedence of allowing something to happen because proper work was not completed to ensure all regulations were met.

Mr. Gunnoe said that the most challenging thing, as previously mentioned, was that it could have been built to the east of the current location.

Mr. Parrish said that the area chosen for construction was the highest point of the property.

Mr. Zitesman asked that if the contractor understood the existing setback and was required to redesign the site, could he reconfigure the proposed development.

Mr. Parrish said not economically.

Mr. Page said that the Board appreciated the comments of Mr. Parrish. He said this was a very unique situation.

Mr. Gunnoe said that if they had requested the application before construction was completed, he would not have approved the variance. He apologized to the homeowners and the contractor.

Motion and Vote

Brett Page made a motion, seconded by Rion Myers to disapprove this variance request to Zoning Code Section 153.231, finding that the request does not meet all the required non-use (area) variance standards and review criteria of Code Section 153.231.

The vote was as follows: Mr. Todoran, yes; Mr. Zitesman, yes; Mr. Gunnoe, yes; Mr. Myers, yes; and Mr. Page, yes. (Disapproved – 5 – 0.)

Mr. Page thanked the applicant and Mr. Parrish for bringing the variance request to the Board and said they were sorry that it did not remedy their issues.

Mr. Page adjourned the meeting at 7:31 p.m.